

FCC MAIL SECTION

May 3 3 39 PM '95  
 Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 95-49

In the Matter of

Amendment of Section 73.202(h), RM-8558  
 Table of Allotments.  
 FM Broadcast Stations.  
 (Llano and Marble Falls, Texas)

## NOTICE OF PROPOSED RULE MAKING

Adopted: April 19, 1995;

Released: May 1, 1995

Comment Date: June 22, 1995

Reply Comment Date: July 7, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Maxagrid Broadcasting Corporation ("petitioner"), licensee of Station KLKM(FM), Channel 284C3, Llano, Texas, proposing the substitution of Channel 285C3 for Channel 284C3, the reallocation of Channel 285C3 from Llano to Marble Falls, Texas, and the modification of petitioner's license to specify Marble Falls as Station KLKM(FM)'s community of license. Petitioner also proposes the allotment of Channel 242A at Llano, Texas. Petitioner states it will apply for Channel 285C3 at Marble Falls, if allotted.<sup>1</sup>

2. Petitioner seeks modification of Station KLKM(FM)'s license pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. Petitioner contends that adoption of its proposal will result in a preferential arrangement of allotments by bringing a first local aural transmission service to Marble Falls. In support of its proposal, petitioner states that Marble Falls is an incorporated city with a 1990 U.S. Census of 4,007 persons, while the city of Llano only has a population of 2,962 persons. Petitioner notes that Marble Falls is served by a Mayor, City Council, Chamber of Commerce, library, Post Office, independent school system, as well as police and fire departments.

3. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. Our initial analysis of petitioner's proposal indicates that while it would provide a first local aural transmission service to Marble Falls, it also would deprive Llano of its sole local service, since Station KLKM(FM) is the only station licensed to the community. Although, petitioner suggests that Channel 242A could be allotted to Llano, this is not an equivalent substitution for three reasons. First, the Commission has specifically stated that the replacement of an operating station with a vacant allotment does not adequately cure the disruption of existing service to the public.<sup>2</sup> Second, whether Channel 242A could ultimately be allotted to Llano through a rule making proceeding is speculative. In this regard, petitioner does not state its intention to apply for Channel 242A at Llano. In order for the Commission to propose a change to the FM Table of Allotments, the proponent of an allotment proposal must site a clear intention to apply for the channel and indicate a willingness to construct a station. Absent such an expression of interest, the Commission will not propose the allotment of a channel. Third, if we were so inclined to allot Channel 242A, this does not negate the loss of service to a segment of Llano's population, as petitioner suggests to replace a Class C1 station at Llano with a Class A facility. Thus, we find that petitioner's proposal represents a request to remove the sole local commercial FM service from Llano.

4. Although the *Community of License MO&O* restricts the removal of a community's sole local broadcast service, that document also states that a waiver of the prohibition will be considered "in the rare circumstances where removal of a local service might serve the public interest." *Id.*, 5 FCC Rcd 7096. However, we do not believe that the public interest is served by removing a community's sole local transmission service merely to provide a first local transmission to another community. The reallocation proposal must serve the Commission's allotment priorities and policies.<sup>3</sup> In this case, petitioner simply maintains that adoption of its proposal would provide service to a larger community. In order to evaluate this proposal it is necessary to solicit more information. Therefore, we request that petitioner provide information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Channel 285C3 is allotted to Marble Falls. Petitioner should also indicate the number persons located in any white or grey areas that are created by the adoption of this proposal. The study should also indicate the number of reception services which are now available within the gain and loss areas. Finally, we request petitioner to submit any additional information as to the overall public interest benefits that would flow from grant of this proposal.

5. Channel 285C3 can be allotted to Marble Falls, Texas, in compliance with the minimum distance separation requirements with a site restriction of 16.1 kilometers (10.0 miles) southeast to accommodate petitioner's desired trans-

<sup>1</sup> Petitioner advances the allotment of Channel 242A at Llano, Texas, as part of its reallocation proposal. However, petitioner has not expressed an interest in applying for Channel 242A at Llano, therefore, we will not propose the allotment of Channel 242A to the community.

<sup>2</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4

FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990).

<sup>3</sup> The FM priorities are: (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

mitter site.<sup>4</sup> In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional channel at Marble Falls. Since Marble Falls is located within 320 kilometers (199 Miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Llano, Texas	284C3	--
Marble Falls, Texas	--	285C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **June 22, 1995**, and reply comments on or before **July 7, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John Joseph McVeigh  
Multinational Legal Services, P.C.  
11 Dupont Circle  
Suite 700  
Washington, D.C. 20036  
(Counsel for petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2173. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of

evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

<sup>4</sup> The coordinates for Channel 285C3 at Marble Falls are North

Latitude 30-26-45 and West Longitude 98-11-45.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.